

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

HOLCOMBE, et. al,

Plaintiffs

vs.

UNITED STATES OF
AMERICA,

Defendant

NO. 5:18-CV-00555-XR

(consolidated cases)

JOINT STATUS UPDATE

The Parties have conferred per the Court's Order, ECF No. 452, and request the Court proceed with the damages portion of the trial.

1. *Estimate of trial length*

Plaintiffs request the Court allocate no more than 4 weeks to the trial of this matter.

The Government is amenable to an agreed-upon global time limit with the Parties to be granted equal time, but is not able to make a specific request to this Court until additional stipulations are reached which will clarify and narrow the issues for trial. The Government has proposed to Plaintiff executing the damages phase of this case in five "mini-trials" which would consist of family units on the grounds that these divisions are inherent in this case, would prevent unnecessary duplication, and provide both Parties with the requisite time to prepare for each set of Plaintiffs.

Plaintiffs have not accepted this proposal and maintain their statement above. Because both parties have attempted to utilize similar experts across families when able, Plaintiffs believe that the mini-trial approach would require duplicate testimony, would increase costs of witnesses, staff, and the technology teams necessary to run the trials, and would unnecessarily prolong the damages trial.

2. *Trial Start Date*

The Government requests trial should not start earlier than 60 days after the filing of this Joint Status Update. The Government notes that 60 days from the filing of this Joint Status Update will fall immediately after/during the Jewish holidays, which will affect some of the Government's trial team. As such, the Government proposes a start date no earlier than October 4, 2021.

Plaintiffs do not agree to any time limits on when the trial would start and defer to the Court's schedule. Plaintiffs would prefer to start the trial as soon as the Court's schedule would allow and would be available to do so.

3. *Parties' Agreements*

The Parties stipulate to the following:

1. The Parties will offer into evidence without objection as to admissibility the following Plaintiffs' expert reports related to damages, provided that they were timely designated and produced in accordance with the scheduling order and/or by the agreement of the parties and the propounding expert is available to testify at trial, if called (even if not actually called to trial by either party):
 - a. Angel Roman, M.D.

- b. Carl Hubbard, Ph.D.
 - c. Chester Gwin, M.D.
 - d. Christopher B. Ticknor, M.D.
 - e. Dan Bagwell, R.N.
 - f. David Feltoon, Ph.D.
 - g. David J. Altman, M.D.
 - h. Gerald Casenave, Ph.D.
 - i. Irmo Marini, Ph.D.
 - j. Jacqueline Valencia Mendez
 - k. Joann Murphey, Ph.D.
 - l. Joe Gonzales, M.D.
 - m. Kasi Bowles Howard, Psy.D.
 - n. Katy Fowler Sutton, Psy.D.
 - o. Keith Fairchild, Ph.D.
 - p. Mary Kennington, Ph.D.
 - q. Robert E. Todd, M.D.
 - r. Sharmila Dissanaiké, M.D.
 - s. Steven Best, M.D.
2. The Parties will offer into evidence without objection as to admissibility the following Defense expert reports related to damages, provided that they were timely designated and produced in accordance with the scheduling order and/or by the agreement of the parties and the propounding expert is available to testify at trial, if called (even if not actually called to trial by either party):
- a. Danielle Becker, M.D.

- b. Evan Appelbaum, M.D.
- c. Richard G. Bowman, M.D.
- d. William O. Brant, M.D.
- e. Jennifer Canter, M.D.
- f. Christopher Cooper, M.D.
- g. Michael J. Kosnett, M.D.
- h. Samuel M. Lundstrom, Ph.D.
- i. Amy MacKenzie, Ph.D.
- j. Benzel MacMaster, M.D.
- k. Brian P. Marx, Ph.D.
- l. Anthony Annunziata, Ph.D.
- m. Stephanie Larew, Ph.D.
- n. Nikki Frousakis, Ph.D.
- o. Kelly Harper, Ph.D.
- p. Daniel Lee, Ph.D.
- q. Alexandria Miller, Ph.D.
- r. Alora Rando, Ph.D.
- s. Kaitlyn Wellcome, Ph.D.
- t. Erika Wolf, Ph.D.
- u. Christopher Meyers
- v. John E. Scarborough, Ph.D.

w. James A. Scott, M.D.

3. The Parties are working towards limiting the number of live witnesses at trial and will provide the Court with a final list of live Plaintiffs, Plaintiffs and Defendant experts, and other witnesses. The Parties have proposed a deadline for this below.
4. The Parties intend to enter a stipulation on past-medical costs incurred and are working towards finalizing those numbers.
5. The Parties agree to offer into evidence without objection as to admissibility the medical and billing records of the Plaintiffs which were provided to or received by the Government prior to the submission of this Joint Status Update. The Parties further intend to enter into additional agreements regarding the reasonableness and medical necessity of these agreed-upon exhibits.
6. The Parties have agreed to enter a stipulation concerning minimum amounts of economic damages such that the issues before the Court are narrowed to non-economic damages and any differences between the Parties position on economic damages.
7. The Plaintiffs do not request an opening argument for damages but do request closing arguments. The Government requests both a brief opening statement and a closing argument.
8. The Parties are open to reasonable time-limits for the presentation of evidence, provided time-limits are equal for both Parties. The Parties can provide a recommendation as to the time limit after the Parties have reached an agreement on the scope of stipulations and admission of deposition transcripts.

The Parties request the Court set the following deadlines:

1. Twenty-one (21) days before the trial date, the Parties should file:

- a. their exhibit lists, including joint exhibits;
 - b. their testifying witness lists, including designating which witnesses will be live and which will appear via Zoom;
 - c. for witnesses not designated for live testimony, the parties are currently working towards an agreement on how this testimony shall be presented and shall file by this deadline once agreement is reached; and
 - d. stipulations for the damages phase.
2. Fourteen (14) days before the trial date, after meeting and conferring, the Parties should file:
 - a. objections to exhibits; and
 - b. objections and counter designations to deposition testimony.
3. Seven (7) days before the trial date, the Parties shall file any replies and objections to counter designations of disposition testimony.
4. Thirty (30) days after the conclusion of the trial, the Parties should file their proposed findings of fact and conclusions of law related to damages.
5. Should the Government's proposed "mini-trials" be accepted, these general deadlines would still apply before the commencement of the first trial, and/or the final trial in the case of the proposed findings of fact and conclusions of law and would cover all Plaintiffs.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

By our signatures above, we certify that a copy of Joint Status Update has been sent to the following on July 21, 2021 via the Court's CM/ECF notice system.

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Stephen E. Handler
Jocelyn Krieger
James G. Touhey, Jr.
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